MT LEGISLATIVE HISTORY

Chapter 358 1987

Bill H _____ (S) 92 Original bill & hist. ✓C

H. Committee on Judiciary S. Committee on Natural Resources

Hearing Date(s)	Mar 19	✓C	Hearing Date(s)	Jan 28	✓C
	_____	___C		Jan 30	✓C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	Mar 19	✓C		Jan 30	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

3/19	HEARING		
3/25	COMMITTEE REPORT--BILL CONCURRED		
3/27	2ND READING CONCURRED	88	8
3/28	3RD READING CONCURRED	85	7
	RETURNED TO SENATE		
4/01	SIGNED BY PRESIDENT		
4/02	SIGNED BY SPEAKER		
4/02	TRANSMITTED TO GOVERNOR		
4/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 357 EFFECTIVE DATE: 10/01/87		

SB 89 INTRODUCED BY KEATING, GAGE, HARDING, ET AL.
REDUCING THE RESOURCE INDEMNITY TRUST TAX RATE FROM 0.5 PERCENT TO 0.1 PERCENT

1/12	INTRODUCED		
1/12	REFERRED TO TAXATION		
1/13	FISCAL NOTE REQUESTED		
1/15	FISCAL NOTE RECEIVED		
1/16	HEARING		
1/30	ADVERSE COMMITTEE REPORT ADOPTED	40	9

SB 90 INTRODUCED BY HAMMOND, THAYER, MCCALLUM, ET AL.
PROVIDE TAX BENEFITS TO SINGLE FAMILY RESIDENTIAL PROPERTY AND OTHER IMPROVEMENTS

1/13	INTRODUCED		
1/13	REFERRED TO TAXATION		
1/14	FISCAL NOTE REQUESTED		
1/16	HEARING		
1/21	FISCAL NOTE RECEIVED		
3/06	TABLED IN COMMITTEE		

SB 91 INTRODUCED BY HAMMOND, MARKS
EXCLUDE SECONDARY IMPACT PERSONS FROM HARD-ROCK MINING IMPACT PLANS AND TAX
BY REQUEST OF ADMINISTRATIVE CODE COMMITTEE

1/13	INTRODUCED		
1/13	REFERRED TO LOCAL GOVERNMENT		
2/23	HEARING		
2/23	COMMITTEE REPORT--BILL PASSED AS AMENDED		
4/23	PLACED ON 2ND READING AT DISCRETION OF PRESIDENT	50	0
	DIED IN PROCESS		

SB 92 INTRODUCED BY STIMATZ, ECK, ABRAMS, ET AL.
AUTHORIZES COMPACT COMMISSION TO CONTINUE NEGOTIATIONS WITH INDIAN TRIBES
BY REQUEST OF WATER POLICY COMMITTEE

1/13	INTRODUCED		
1/13	REFERRED TO NATURAL RESOURCES		
1/14	FISCAL NOTE REQUESTED		
1/23	FISCAL NOTE RECEIVED		
1/24	SPONSORS ADDED		
1/28	HEARING		
1/31	COMMITTEE REPORT--BILL PASSED		
2/04	2ND READING PASSED	50	0
2/06	3RD READING PASSED	47	1

	TRANSMITTED TO HOUSE		
2/11	REFERRED TO JUDICIARY		
3/19	HEARING		
3/19	COMMITTEE REPORT--BILL CONCURRED		
3/27	2ND READING CONCURRED	83	0
3/28	3RD READING CONCURRED	88	4
	RETURNED TO SENATE		
4/01	SIGNED BY PRESIDENT		
4/02	SIGNED BY SPEAKER		
4/02	TRANSMITTED TO GOVERNOR		
4/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 358 EFFECTIVE DATE: 7/01/87		

SB 93 INTRODUCED BY WALKER, MEYER, DRISCOLL, ET AL.
EXTEND 1985 BENEFIT ADJUSTMENT UNDER MUNICIPAL POLICE RETIREMENT SYSTEM
BY REQUEST OF PUBLIC EMPLOYEES' RETIREMENT BOARD

1/13	INTRODUCED		
1/13	REFERRED TO LOCAL GOVERNMENT		
1/15	REREFERRED TO STATE ADMINISTRATION		
1/20	HEARING		
1/20	COMMITTEE REPORT--BILL PASSED		
1/22	2ND READING PASSED	47	0
1/24	3RD READING PASSED	46	0
	TRANSMITTED TO HOUSE		
2/04	REFERRED TO STATE ADMINISTRATION		
3/04	HEARING		
3/04	COMMITTEE REPORT--BILL CONCURRED		
3/05	2ND READING CONCURRED	97	1
3/06	3RD READING CONCURRED	92	0
	RETURNED TO SENATE		
3/10	SIGNED BY PRESIDENT		
3/11	SIGNED BY SPEAKER		
3/11	TRANSMITTED TO GOVERNOR		
3/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 93 EFFECTIVE DATE: 3/16/87		

SB 94 INTRODUCED BY LYBECK, BROWN, J., JACOBSON
REQUIRING ORAL INQUIRY INTO ORGAN DONATION WHEN ISSUING DRIVER'S LICENSE

1/13	INTRODUCED		
1/13	REFERRED TO JUDICIARY		
1/20	HEARING		
2/20	COMMITTEE REPORT--BILL PASSED		
2/21	2ND READING PASSED	27	17
2/23	3RD READING PASSED	40	9
	TRANSMITTED TO HOUSE		
2/24	REFERRED TO JUDICIARY		
3/11	HEARING		
3/13	COMMITTEE REPORT--BILL CONCURRED		
3/16	2ND READING CONCURRED	90	4
3/17	3RD READING CONCURRED	91	5
	RETURNED TO SENATE		
3/20	SIGNED BY PRESIDENT		
3/21	SIGNED BY SPEAKER		

SENATE BILL NO. 92

INTRODUCED BY STIMATZ, ECK, ABRAMS, MARKS, BRADLEY, GALT, SPAETH, IVERSON, YELLOWTAIL, GAGE, HIRSCH, JERGESON, LYBECK, BENGTSON, REGAN, LYNCH, B. WILLIAMS, MANNING, WEEDING, JACOBSON, VAN VALKENBURG, HALLIGAN, VAUGHN, WALKER, MAZUREK, KOLSTAD, HARDING, HOFMAN, ANDERSON, THAYER, PHILLIPS, HANSON, NATHE, RUSSELL, KENNERLY, BACHINI, ASAY

BY REQUEST OF THE WATER POLICY COMMITTEE

IN THE SENATE

JANUARY 13, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
JANUARY 24, 1987	ON MOTION BY CHIEF SPONSOR, SENATORS YELLOWTAIL, GAGE, HIRSCH, JERGESON, LYBECK, BENGTSON, REGAN, LYNCH, WILLIAMS, MANNING, WEEDING, VAUGHN, JACOBSON, VAN VALKENBURG, HALLIGAN, WALKER, MAZUREK, KOLSTAD, HARDING, HOFMAN, ANDERSON, AND THAYER, AND REPRESENTATIVES PHILLIPS, HANSON, NATHE, RUSSELL, KENNERLY, BACHINI, AND ASAY ADDED AS SPONSORS.
JANUARY 31, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 2, 1987	PRINTING REPORT.
FEBRUARY 4, 1987	SECOND READING, DO PASS.
FEBRUARY 5, 1987	ENGROSSING REPORT.
FEBRUARY 6, 1987	THIRD READING, PASSED. AYES, 47; NOES, 1.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 11, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.

MARCH 19, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 27, 1987	SECOND READING, CONCURRED IN.
MARCH 28, 1987	THIRD READING, CONCURRED IN. AYES, 88; NOES, 4.
	RETURNED TO SENATE.
IN THE SENATE	
MARCH 30, 1987	RECEIVED FROM HOUSE.
	SENT TO ENROLLING.

Senate BILL NO. 92

INTRODUCED BY Stewart, Grosfield, Abrams, Marks, Bradley, Swift

BY REQUEST OF THE WATER POLICY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE AUTHORITY OF THE RESERVED WATER RIGHTS COMPACT COMMISSION TO CONTINUE NEGOTIATIONS WITH THE INDIAN TRIBES UNTIL JULY 1, 1993; AMENDING SECTIONS 85-2-217 AND 85-2-702, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-217, MCA, is amended to read:

"85-2-217. Suspension of adjudication. While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies which are negotiating are suspended. The obligation to file water rights claims for those reserved rights is also suspended. This suspension shall be effective until July 1, ~~1987~~ 1993, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, ~~1987~~ 1993, the suspension shall terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies shall be subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their reserved water rights shall be subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section."

Section 2. Section 85-2-702, MCA, is amended to read:

"85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings shall be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Upon receipt of such written designation from the governing body of a tribe, compact negotiations shall be considered to have commenced.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy

LC 0488/01

INTRODUCED BILL
SB 92

with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana and any affected tribal governing body, and approval by the appropriate federal authority.

(3) Upon its ratification by the Montana legislature and the tribe, the terms of a compact must be included in the preliminary decree as provided by 85-2-231, and unless an objection to the compact is sustained under 85-2-233, the terms of the compact must be included in the final decree without alteration. However, if approval of the state legislature and tribe has not been accomplished by July 1, ~~1987~~ 1993, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 6 months. These new filings shall be used in the formulation of the preliminary decree and shall be given treatment similar to that given to all other filings."

NEW SECTION. Section 3. Effective date. This act is effective July 1, 1987.

-End-

In compliance with a written request, there is hereby submitted a Fiscal Note for SB092 , as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
This bill would extend the authority of the Reserved Water Rights Compact Commission to continue negotiations with the Indian tribes until July 1, 1993.

ASSUMPTIONS:
1. A meeting of the full commission will be held approximately every other month. Meetings are usually held in Helena, and six of the nine members travel an average of 350 miles to attend.
2. One negotiating session or negotiating team meeting will be held monthly. Approximately one-half of the meetings are in Helena, one half at other locations in Montana, and one out-of-state meeting a year.
3. Technical and legal staff will be required at existing levels.
4. Contracted services will be required for special counsel, economic analysis, computer analysis and transcripts to support negotiations.
5. Personnel costs reflect the FY87 reorganization of the commission which promotes reliance on staff rather than contract services.

FISCAL IMPACT:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Expenditures:						
Personal Services	$ 0	$170,961	$170,961	$ 0	$170,698	$170,698
Operating Expense	0	58,806	58,806	0	58,781	58,781
TOTAL	$ 0	$229,767	$229,767	$ 0	$229,479	$229,479
Funding:						
General Fund	$ 0	$114,884	$114,884	$ 0	$114,740	$114,740
State Special Revenue	0	114,883	114,883	0	114,739	114,739
TOTAL	$ 0	$229,767	$229,767	$ 0	$229,479	$229,479

David L. Hunter DATE 1/20/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Lawrence G. Stimatz DATE 1-21-87
LAWRENCE G. STIMATZ, PRIMARY SPONSOR

Fiscal Note for SB092, as introduced.

SB 92

CHAIRMAN--SEN. TOM KEATING
NORMAL SCHEDULE==> SITE: ROOM 405 DAYS: M-W-F TIME: 1:00 P.M.
SECRETARY-NADINE MCCURDY

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
SB0027 GAGE, DELWYN	1/03	1/09 1/28	COSTS, ATTORNEY FEE TO PREVAILING PTY IN SUIT FOR HARM BY OIL, GAS OPERATION	TABLED - 1/28		
SB0085 GAGE, DELWYN	1/12	1/16	REVISING OIL AND GAS CONSERVATION LAWS	PASS AS AMENDED	RULES	1/16
SB0086 GAGE, DELWYN	1/12	1/19 1/30 2/13	UNIFORM DORMANT MINERAL INTERESTS ACT	TABLED 2/13		
SB0092 STIMATZ, LAWRENCE G.	1/13	1/28 (LARRY) 1/30	AUTHORIZES COMPACT COMMISSION TO CONTINUE NEGOTIATIONS WITH INDIAN TRIBES	DO PASS		1/30
SB0151 GALT, JACK E.	1/20	2/04	AUTHORIZES DNRC TO ISSUE A LARGE GROUNDWATER PERMIT IN MUSSELSHELL COUNTY	DO PASS		2/4
SB0159 BOYLAN, PAUL F.	1/20	2/11 2/18	REDEFINING "SURFACE WATER" FOR THE DETERMINATION OF RECREATIONAL ACCESS	Tie Vote 2/18		
SB0184 TVEIT, LARRY J.	1/21	2/09 2/13	EXEMPTING ISSUANCE OF PERMITS TO DRILL OIL OR GAS WELLS FROM MEPA	Tie Vote 2/13		
SB0208 KEATING, THOMAS F.	1/24	1/30	REQUIRES ROYALTY PAYMENTS DERIVED FROM SALE OF OIL AND GAS BE HELD IN TRUST	ADVERSE REPORT		1/30
SB0221 WEEDING, CECIL	1/26	2/04 2/13	REQUIRES LANDOWNER COMPENSATION WHEN OIL/GAS WELLS TEMPORARILY ABANDONED	ADVERSE REPORT		2/13
SB0233 KEATING, THOMAS F.	1/27	2/16 2/19	AMENDS THE MAJOR FACILITY SITING ACT BY REDEFINING UTILITY	Tie Vote 2/19		
SB0262 GAGE, DELWYN	2/02	2/18	REVISES THE DEFINITION OF NEW PRODUCTION OF OIL AND GAS	DO PASS		2/18

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

January 28, 1987

The meeting of the Senate Natural Resources Committee was called to order by Chairman Thomas Keating on January 28, 1987, at 1:00 p.m. in Room 405 of the State Capitol.

ROLL CALL: All members were present with the exception of Senators Cecil Weeding and Larry Tveit who were absent.

CONSIDERATION OF SENATE BILL 92: Sen. Lawrence Stimatz, District #35, stated that SB 92 was introduced upon the request of the Reserved Water Rights Compact Commission to extend the authority of the commission for six more years. The commission is charged under the statute with negotiating with the federal government and with Indian tribes for their reserved water rights, and SB 92 would extend the life of the commission until July 1, 1993. Sen. Stimatz explained that the commission was established in 1979 by SB 76 and it has been very active in its conduct of business by entering into negotiations with all of the Indian tribes in the State and federal agencies that have reserved water rights. The nine-member commission was appointed by the Governor; and at the present time, the commission consists of the following members:

Senator Galt, Chairman
Ex-Senator Gordon McOmber, Immediate Past Chairman
Audrey Roth
Senator Joe Mazurek, District 23
Representative Gary Spaeth, District 84
Chris Tweeten, Assistant Attorney General
Carl Davis, Dillon
Ex-Senator Etchart, Glasgow
Everett Elliot, Conrad

Sen. Stimatz explained that the worth of the commission could best be illustrated by its cost effectiveness; for example, the commission had already negotiated one compact with the Fort Peck Tribe at an estimated cost of $1 million. Sen. Stimatz said that Wyoming, who has only one Indian tribe, in their efforts to settle reserved rights had been in litigation for seven or eight years at a cost of $7 million and settlement as of this date had not been reached. It was Sen. Stimatz's contention that it is far better to negotiate an agreement than to go into court because court's solution seldom satisfies both parties; whereas, if water rights are

negotiated, both are appeased. Sen. Stimatz stated that the changes to SB 92 are basic and simple. In conclusion, Sen. Stimatz presented an unsolicited letter with an attached Tribal Resolution from the Chairman of the Chippewa Cree Tribe of the Rocky Boy's Reservation that supports an extension for the Reserved Water Rights Compact Commission. (Exhibit 1) Sen. Stimatz also submitted written testimony from Rick Meis, Montana Environment Information Center Action Fund, who was unable to attend the hearing, that also supports SB 92. (Exhibit 2) Sen. Stimatz then invited members of the commission to present their points of view.

Sen. Jack Galt, Dist. #16, strongly supported SB 92 because the commission is an integral part of the general adjudication efforts. Sen. Galt said that the commission deals with all entities that have any reserved land, which includes reserved water, in the State of Montana and of the 85 water basins in the State, reserved land infringes on 72 or 73 of them. Sen. Galt announced that the commission is close to compacting with several government agencies; and there are several tribes who have indicated a strong interest. If SB 92 is not passed, Sen. Galt said federal government agencies and tribes would have to be in State courts presenting their claims for water, and Montana is not prepared to face such a horrendous task. Sen. Galt concluded by saying he felt that the cheapest, best, and fastest way to resolve the reserved water rights issue would be to extend the commission for another six years. However, Sen. Galt did comment that if little or no progress is made within the next six years, in 1993 he would be in favor of abolishing the commission.

Chris Tweeten, Assistant Attorney General, and Vice-Chairman of the commission, agreed with Sen. Galt's reasoning for extension of the commission. Mr. Tweeten stated that it is difficult to quantify water rights, and Montana is unique in its willingness to enter into negotiations in its "government to government" approach and with Indian tribes. Mr. Tweeten explained that the compact commission had pioneered the cooperative agreement process which has been copied by other states in an effort to settle jurisdictional disputes without going to court. Mr. Tweeten told the committee that the Attorney General has gone on record as being in support of SB 92.

Mr. McOmber, member of commission, said he is a little concerned about the length of time it has taken to make progress and if there is not more measurable progress in the next few years, he will suggest the compact commission go out of existence. Mr. McOmber told the committee that he hopes it doesn't happen because he feels the compact commission is a very good investment for the State and removes the animosity that occurs when going to court for litigation. Mr. McOmber felt that initially there was little realization of the magnitude of the commission's responsibilities--in addition to the Indian tribes, the commission is dealing with 10 national forests; 2 national parks, 3 national monuments, 8 wildlife refuges, 12 wilderness areas, and some wild and scenic rivers. Mr. McOmber further stated that a new dimension has been added to the water law in Montana and that is "in-stream flow. As a member of the commission, Mr. McOmber said the commission is doing as good of a job as can be expected under the circumstances.

PROPONENTS: Larry Fasbender, Department of Natural Resources and Conservation, stated the compact commission is attached to the Governor's Office, but DNRC provides administrative support and office space for the staff. Mr. Fasbender explained that DNRC has great interest in what the commission accomplishes because DNRC is involved in the adjudication process in the management of Montana's water. Mr. Fasbender said the way in which water right is handled and adjudicated for all of the people in the State is an important process that has to undertaken in the manner which has been set forth by legislation and as explained by the members of the compact commission. It was Mr. Fasbender's belief that even if the commission does not accomplish everything they are projecting in the next six years, the commission should not even then be terminated. The expectations and demands are somewhat different than when the commission was originally formed, but Mr. Fasbender feels the process has been a good, learning one. In examining what other states have done in resolving the reserved water right issue, Mr. Fasbender maintains the the compact commission is the best method and supported SB 92 wholeheartily.

Michael T. Pablo, Chairman of the Confederated Salish and Kootenai Tribes, stated they are negotiating with the compact commission at the present time and the tribes support SB 92. (Exhibit 3)

Daryl Wright, member of the Chippewa Cree Tribe and authorized representative of the Tribal Water Rights Negotiation Team, related that they had entered into negotiation with the compact commission, but two unrealistic deadline dates had passed without a compact being reached. As a pre-requisite to meaningful negotiations, Mr. Wright said the tribe had been making studies for 3 1/2 years and some studies would not be completed until July 1, 1987, or thereafter. For the benefit of those present who felt the compact commission was taking too long to negotiate, Mr. Wright explained that because of the financial burden of water rights negotiations, the tribe must secure its funding from the federal government and funds are often very long in coming, thereby causing unavoidable delays. Mr. Wright said that the six-year time extension as provided in SB 92 is a reasonable time frame by which one can expect results; and he said that it would resolve the unrealistic deadline issue. Mr. Wright stated that the passage of SB 92 would be in the best interests of the State and the Chippewa Cree Tribe.

Franklin Perez, Chairman of the Fort Belknap Tribal Water Policy Committee, supported the continuation of the compact commission as an avenue for settlement of water rights. Mr. Perez explained that he felt there are benefits of making a compact rather than going to court--one of them being less costly for everyone concerned. (Exhibit 5)

Mr. Dan Hoven, Attorney for the Joint Board of Control for the Flathead, Mission, and Jocko Valley Irrigation Districts, located on the Flathead Indian Reservation, clearly stated that the joint board gives "qualified" support to SB 92 because the commission has a very important role to play in the negotiation of water rights in the State. Mr. Hoven explained that his clients, the Joint Board of Control, have expressed a desire to become a part of the compact commission process because they have significant water rights existing on the Flathead Indian Reservation. Negotiations with the Confederated Salish-Kootenai Tribes and the compact commission will significantly impact those water rights. Therefore, Mr. Hoven requested the commitee to defer any action on SB 92 until after the evening meeting on January 28 between the Joint Board of Control and the Reserved Water Rights Compact Commission to explore the possibility of allowing the board to become part of the process. If agreement is reached, Mr. Hoven plans to appear before the committee with a proposed amendment to SB 92. Mr. Hoven invited Alan Mikkelsen to further explain the joint board's role and purpose by giving some history.

Alan Mikkelsen, Executive Director, Flathead Board of Control, explained that the board was formed pursuant to State law to oversee and conduct business of three irrigation districts--Jocko, Mission, and Flathead. Flathead Irrigation District comprises some 127,000 acres, making it the largest irrigation project in the State of Montana. Mr. Mikkelsen said that approximately 89% of the land on the irrigation project is represented by the Joint Board of Control. This is a unique situation in the State and quite possibly in the United States in which such a large acreage of private land is located in the middle of an Indian Reservation. Water rights stem basically from two areas--allotted water rights and homesteading in the early 1900's. Fifty-three percent of the land in the irrigation project originally belonged to a lottee or successors to allottees, and 47% of the land comprises homesteaded water rights. Mr. Mikkelsen said the board would like to be involved in the negotiation process because it doesn't have the money to litigate. In the fall of 1985, board attended a compact commission meeting as observers. Subsequently the board has been denied that privilege. Mr. Mikkelsen reiterated that the board of control feels it is their right to sit down at the same table as "everybody else" to negotiate water rights.

Jo Brunner, Montana Water Development Association, was supportive of the need to extend authority of the Reserved Water Rights Compact Commission in order to pursue negotiations with various Indian tribes in the State. Ms. Brunner felt that it is important to include all parties particular to each adjudication process and said that the Flathead Joint Board of Control is part of any adjudication of water rights concerning the Kootenai-Salish Tribes; therefore, she said that the Montana Water Development Association supports the joint board in their request to be included in the negotiations process and in their request for a continuance of hearing until after the January 28 evening meeting.

Dan Decker, Tribal Attorney for the Confederated Salish and Kootenai Tribes, said that the actual definition of water rights is up to the courts; but because of the proposal that was made by the board of control, asked permission to make several brief comments.

Chairman Keating's response was that the other proponents had spoken to the issue from their standpoint, and then Sen. Keating invited Mr. Decker to make his comments if they were germane to the bill. Sen. Keating explained that the proponents were public taxpayers who are affected by legislative matter and they stated their position for the bill from their standpoint. Sen. Keating further stated that Senate Natural Resources Committee would not be determining whether board of control becomes a part of the negotiations with the Reserved Water Rights Compact Commission because that decision is not within the scope of the hearing. Again, Sen. Keating said the proponents were allowed to place their testimony on record for public knowledge and their tentative support of the bill, but the committee would not take any testimony on the makeup of the commission.

Sen. Gage indicated he had some forthcoming questions when it came to questions (or discussion) item on the agenda that would address what Mr. Decker wanted to say. Mr. Decker conceded to wait upon Sen. Gage's questions.

OPPONENTS: There were no opponents to SB 92.

QUESTIONS (OR DISCUSSION) BY COMMITTEE: Sens. Lynch and Gage verified Sen. Keating's remarks concerning the issue that SB 92 addresses only the extension of the Reserved Water Rights Compact Commission for another six years.

In reply to a question from Sen. Gage, Mr. Tweeten said that the commission does not have the authority to negotiate with private boards or individuals. Mr. Tweeten then informed the committee that Representative Spaeth had submitted a bill drafting request that is directed to the concern the joint board had raised, which is authorization to enter into negotiations on the same basis as the tribes and federal government. Mr. Tweeten said that the compact commission's position would be formalized at the meeting scheduled for the evening of January 28. Mr. Tweeten further stated that the commission is aware that the compact must eventually be ratified by the joint board and the joint board's concerns would have to be addressed. However, it was Mr. Tweeten's personal opinion that the commission could negotiate with those goals in mind without the joint board's being at the negotiation table.

Sen. Halligan asked if under the open meeting law, whether the joint board could be allowed to participate, even though compact commission could not negotiate with them. Explaining that the open meeting law is not a model of clarity, Mr. Tweeten said the definition of a meeting is the assemblege of a quorum assembled to take action or vote on an issue. According to Mr. Tweeten, the compact commission doesn't consider a negotiation session to be a meeting under that definition.

Sen. Keating explained to the committee that as chairman, he was allowing latitude in the discussion of SB 92 because a fiscal note was attached to it, and the committee's dealing with 1/2 million dollars of appropriation. If the committee is going to act on a bill in good faith, Sen. Keating said the public deserves a hearing on it from all aspects.

Sen. Gage conveyed the delicacy of the whole process and stated that compacts must be ratified by legislature. Sen. Gage referred to the compact with the Fort Peck Tribe that "got blown out of the water" by the Governor's Office and Attorney General's Office which caused the other tribes in the State to "back off" negotiations. Sen. Gage then asked Mr. Hoven whether the Kootenai-Salish Tribes had been informed of the evening January 28 meeting in which the compact commission was going to meet with the joint board. Mr. Hoven replied that the meeting was common knowledge and the tribes were aware of the proposal that would be made at the meeting; however, the tribes did not know the Joint Board of Control was going to appear at the hearing of SB 92. Sen. Gage asked Mr. Decker to address the delicacy of the matter.

Mr. Decker emphasized that what happened with Fort Peck did cause the other six reservations in Montana to shy away from negotiating water rights with the commission. The incident also caused the Department of Interior to withdraw some of their support. Mr. Decker said the issue is confusing and he stated two points for the record:

1) One of the purposes of the compact commission is to negotiate on behalf of the citizenry of Montana.

2) Compacts must pass legislature.

Mr. Decker indicated that the Confederated Salish and Kootenai Tribes do not object to the compact commission's meeting with the joint board to discuss joint board's concerns; but the tribes do object to meeting at the table with them. To explain further, Mr. Decker said the irrigation districts are political subdivisions of the State and are duly organized under statutory laws and meeting at the table with them would mean that the tribes would be negotiating with two State agencies. Mr. Decker described the purpose of the compact commission is to negotiate federally reserved rights. The rights the tribes and federal agencies are negotiating are long standing, proven U.S. Supreme Court Decision rights; whereas the alleged rights of the irrigation districts are legal theories that yet have to be defined by the U.S. Supreme Court. Mr. Decker therefore believes that the joint board's water right interest is not of the same equality as federal agencies' and tribes' rights.

Mr. Pablo withdrew his support to SB 92; but said he is unopposed to the extension of the authority of the Reserved Water Rights Compact Commission.

Sen. Halligan asked Mr. Tweeten what procedural steps had been taken to accomplish compacts by 1993. Mr. Tweeten said they had taken several steps in their organization that allowed the commission to target compacts that showed the most promise. Commission has been divided into teams with each team having the responsibility to negotiate with a particular Indian tribe or federal agency so that each member is not required to be responsible for all the issues of all the entities. Mr. Tweeten said the commission has assessed their position with the tribes; developed memoranda; and can evaluate what needs to be done to most easily complete a compact. In some cases, Mr. Tweeten said that historical and anthropological research had been necessary. Mr. Tweeten stated that substantive work had been accomplished regarding U.S. Fish and Wildlife Service, National Park Service and U.S. Forest Service because federal agency reserved rights claims are less complicated than claims that are being made by the tribes. Most of the federal agencies' claims simply involve in-stream flow rights, while tribal claims require an analysis of irrigability of lands within the Indian reservations which is a highly complicated, technical and expensive process.

Sen. Yellowtail asked if attorneys for Montana have imposed unduly narrow constraints on the negotiation process that have been a hindrance to making a compact. Mr. Tweeten replied that the commission does not always agree wholeheartily with the claims and legal positions of the federal agencies and tribes; therefore many times time-consuming research is necessary. Mr. Tweeten acknowledged that this could possibly be interpreted as a hindrance.

Sen. Halligan asked when litigation could be started, and Mr. Tweeten answered that either party can stop negotiations at any time and go to water court.

Sen. Gage asked Mr. Delk from the BIA how much data and and efforts are oriented to ultimately going to court. Mr. Delk replied that everything the BIA is collecting will lend itself to either negotiation or litigation. It is Mr. Delk's opinion that the present Administration strongly supports negotiations and also strongly supports State primacy in most of these issues, but one of the reasons compact commission was formed was to save money. Mr. Delk feels money is not being saved because negotiations require much spending. Furthermore, Mr. Delk believes the longer the negotiations take, the more advantageous it becomes to the State, because it allows the State more time to build a case.

Upon response to a question from Sen. Gage, Marcia Rundle assured the committee there is no problem with the title of SB 92.

Sen. Yellowtail asked Mr. Tweeten to respond to the observations of Mr. Delk who stated there is actually little substantive progress with the exception of Fort Peck Compact. Mr. Tweeten stated the commission is not close to reaching a compact with the other tribes in the State; however, much groundwork--data gathering and legal research--has been done.

Sen. Yellowtail mentioned the State has a fund that the Legislature appropriates for the Attorney General's Office each year that is reserved for litigation with tribes, and he asked Mr. Tweeten if those funds are available to the State for the reserved water rights effort. Mr. Tweeten said it is conceivable that the Attorney General might agree to release some of those funds.

Sen. Keating asked how much money was appropriated for Indian jurisdiction for the biennium; and Clay Smith, Assistant Attorney General, answered that for the 1988-1989 Biennium, the request was $350,000; but none had been earmarked for reserved water rights.

In the event litigation does occur, Sen. Yellowtail asked if the Indian Jurisdiction Project would have the responsibility for conducting that litigation. Mr. Smith said there is no final determination which agency would be responsible.

Being no more questions from the committee, Sen. Keating reminded those present that SB 92 deals specifically with the extension of the Reserved Water Rights Compact Commission for six years, and the only way the committee would be able to deal with the aforementioned discussion would be if amendments were brought by a committee member. No amendments had been prepared or presented.

CLOSING: Sen. Stimatz closed by clarifying that according to Montana statutes, other could not join the commission; and SB 92 simple extends the life of the commission until 1993.

Sen. Keating thanked the presenters for their time and announced that executive action would be taken at a later date on SB 92.

CONSIDERATION OF SB 27: Sen. Gage explained that SB 27 was held in committee basically because committee was awaiting action on SB 50 in which court costs and attorney's fees would be awarded to prevailing party in any civil action. SB 50 was reported out of Judiciary Committee on an Adverse Committee Report and was upheld. In the meantime, however, Sen. Gage reported that the people who had requested the introduction of SB 27 have asked that SB 27 not be passed.

DISPOSITION OF SB 27: Sen. Tveit moved that SB 27 BE LAID ON THE TABLE. Motion passed unanimously.

There being no further business before the committee, Sen. Keating adjourned the meeting at 2:22 P.M.

Thomas F. Keating

THOMAS F. KEATING, Chairman

nm

NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date 1-28-87

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Keating, Chairman	X		
Sen. Cecil Weeding, Vice Chairman		X	
Sen. John Anderson	X		
Sen. Mike Halligan	X		
Sen. Delwyn Gage	X		
Sen. Lawrence Stimatz	X		
Sen. Larry Tveit		X	
Sen. "J.D." Lynch	X		
Sen. Sam Hofman	X		
Sen. William Yellowtail	X		
Sen. Elmer Severson	X		
Sen. Mike Walker	X		

Each day attach to minutes.

DATE January 28, 1987

COMMITTEE ON Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING AND ADDRESS	BILL #	Check One: Support	Check One: Oppose
PLEASE PRINT				
Daniel Decker	Confederated Salish and Kootenai Tribes PO Box 278 Pablo, MT 59821	SB 92	✓	
Michael T. Pablo	Confederated Salish Kootenai Tribes PO Box 278 Pablo MT 59821	SB 92	✓	
DARYL WRIGHT	Chippewa/Cree Tribe	SB92	✓	
Jo Brunner	MonTWaTer Develop-	SB92	✓	
Jean Hoven	Joint Board of Control - FIP	SB 92		
Eugene Manning	Attorney for Legislator	SB 92		
Alan Mikkelsen	Flathead Joint Board of Control	SB92		
Marvin K. Dodge	Res. Water Rgts. Negs. Comm	SB 92	✓	
Jack L. Wolfe	R.W.R.C.C.	✓	✓	
Bob Dezk	BIA	SB92	✓	
Franklin Perez	Ft. Belknap Tribes	SB92	✓	
James R. Musgrove	Fort Belknap Tribes	SB92	✓	
Chris Tweeten	Res. Water Rts. Compact Comm	SB92	✓	
Larry Fasbender	DNRC Helena	SB92	✓	
Stan Bradshaw	Joint Bd of Control FIP	SB92		
Craig Smith	AG's office	SB92	X	
Dale Sailen	Bannatin, MT	SB92		

The Chippewa Cree Tribe of the Rocky Boy's Reservation

Phone: (406)-395-4478 or 4727 - Finance Office
(406)-395-4282 or 4285 - Business Committee

Rocky Boy Route, Box 544
Box Elder, MT 59521

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE January 28, 198
BILL NO. SB 92

January 22, 1987

Honorable Lawrence Stimatz
Capital Station
Helena, Montana 95620

Dear Senator Stimatz:

I understand that you are sponsoring S.B. 92 before the Natural Resources Committee, and that the hearing is presently scheduled on January 28, 1987.

I have enclosed a copy of Tribal Resolution 12-87, which supports and Extention for the Reserved Water Rights Compact Commission. Please feel free to circulate copies as you see fit.

The Tribe will be sending a delegation to testify in support of S.B. 92, and I feel that it's passage is in the best interest of both the Tribe and the State.

Sincerely,

Rocky Stump, Sr by klw

Rocky Stump Sr., Chairman

RS/jp

Enc.

Chippewa Cree Tribe of the Rocky Boy's Reservation

(406)-395-4478 or 4727 - Finance Office
(406)-395-4282 or 4285 - Business Committee

Rocky Boy Route, Box [illegible]
Box Elder, MT 5952[illegible]

R E S O L U T I O N

NO: 12-87

TO SUPPORT AN EXTENSION FOR THE MONTANA STATE COMPACT COMMISSION ON RESERVED WATER RIGHTS

WHEREAS, the Chippewa Cree Tribal Business Committee is the governing body of the Chippewa Cree Tribe of the Rocky Boys Indian Reservation, Montana, by the authority of the Constitution and By-Laws of the Chippewa Cree Tribe, approved on the 23rd. day of November, 1935, and,

WHEREAS, pursuant to the Constitution and By-Laws of the Chippewa Cree Tribe, the Chippewa Cree Tribal Business Committee is charged with the duty of protecting the health, security and general welfare of the Chippewa Cree Tribe, and,

WHEREAS, the Business Committee hereby supports development of the political economic, and social well-being of the Tribe, and,

WHEREAS, the Chippewa Cree Tribe has entered negotiations in good faith, and,

WHEREAS, the Chippewa Cree Tribe has not concluded a negotiated compact with the State of Montana within the time frame identified in SB 28.

THEREFORE BE IT RESOLVED, that the Chippewa Cree Tribe hereby requests that the Montana State Legislature grant an extension to the Montana State Compact Commission on Reserved Water Rights.

C E R T I F I C A T I O N

I, THE UNDERSIGNED AS SECRETARY/TREASURER OF THE CHIPPEWA CREE TRIBE HEREBY CERTIFY THAT THE BUSINESS COMMITTEE IS COMPOSED OF NINE MEMBERS OF WHOM seven (7) MEMBERS CONSTITUTING A QUORUM WERE PRESENT AT A MEETING DULY AND REGULARLY CALLED, NOTICED, CONVENED, AND HELD THIS 19th DAY OF January, 19 87, AND THAT FOREGOING RESOLUTION WAS DULY ADOPTED, AT SUCH MEETING, BY THE AFFIRMATIVE VOTE OF six (6) MEMBERS FOR AND zero (0) MEMBERS AGAINST AND THAT THIS RESOLUTION HAS NOT BEEN RESCINDED OR AMENDED IN ANY WAY.

Randy Stump
CHAIRMAN/ BUISNESS COMMITTEE

Elaine R. Stump
SECRETARY/TREASURER BUSINESS COMMITTEE

SENATE NATURAL RESOURCES
EXHIBIT NO. 1 (page 2)
DATE January 28, 1987
BILL NO SB 92

The Montana Environmental Information Center Action Fund

• P.O. Box 1184, Helena, Montana 59624 (406)443-2520

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE JANUARY 28, 198
BILL NO. SB 92

Senate Bill 92 -- MEIC Testimony

Mr. Chairman, members of the Committee, for the record my name is Rick Meis. I am here today representing the members of the Montana Environmental Information Center.

On behalf of MEIC, I would like to express support for SB 92, which will extend the authority of the Reserved Water Rights Compact Commission to continue negotiations with the Indian tribes in Montana.

So far in this Legislative Session, a number of bills on water and water issues have been introduced. There will be more. And there will be controversy. No one ever said that the resolution of water issues would be easy. But we cannot turn our backs on problems and hope they go away.

SB 92 is simply a straightforward way of addressing one of the important issues at hand -- continuing negotiations with federal agencies and Indian tribes to quantify reserved rights, without resorting to litigation. Let Wyoming provide a lesson for Montana; it encountered very expensive and unsatisfactory litigation on this very issue. We can

take heed of that and work positively toward an acceptable compact.

By extending the Commission's authority for another six years, we avoid having to make hasty and possibly unsatisfactory decisions or, more likely, terminating negotiations and letting the courts decide the issue.

Again, MEIC supports SB 92 and urges the Committee to give the bill a "do pass" recommendation. Thank you.

SENATE NATURAL RESOURCES
EXHIBIT NO. 2 (page 2)
DATE January 20, 1987
BILL NO. SB 92

Michael T. Pablo, Chairman

NAME: Daniel Decker, Tribal Attorney DATE: Jan. 28, 1987
Confederated Salish and Kootenai Tribes
P.O. Box 278
ADDRESS: Pablo, Mont. 59821

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 1-28-87
BILL NO. SB92

PHONE: (406)675-2700

REPRESENTING WHOM? Confederated Salish and Kootenai Tribes

APPEARING ON WHICH PROPOSAL: SB 92

DO YOU: SUPPORT? ~~X~~ changed to unopposed to extension. AMEND? _____ OPPOSE? _____

COMMENTS: The Confederated Salish and Kootenai Tribes are here in support of Senate Bill 92, an amendment to extend the life of the Compact Commission. The Tribes believe that is in the interests of the State and Tribes to view negotiation of water rights as a viable alternative to litigation. Negotiation should save the parties time and financial expense as compared to the costly and lengthy proceedings of litigation.

The Tribes support and hopes this committee will support the extension of Montana's Reserved Water Rights Compact Commission.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE Jan 28 1987
BILL NO. SB 92

Testimony of Richard Whitesell, Area Director, Billings Area, Bureau of Indian Affairs regarding Senate Bill 92 - Authorizing the Montana Reserved Water Rights Compact Commission to continue negotiations

Good afternoon. My name is Robert Delk and I am representing the Area Director, Billings Area Office, Bureau of Indian Affairs. I would like to thank the Committee for the opportunity to discuss views of the Bureau of Indian Affairs on Senate Bill No. 92, which authorizes the Montana Water Rights Compact Commission to continue negotiations.

At the outset, let me reiterate the previously expressed views of the Department of Interior regarding negotiated solutions to water rights problems. The Department endorses negotiated settlements - - witness our participation in the Fort Peck Compact, as well as several settlements in the southwest.

The United States has approached all its negotiations with the State of Montana seriously and in good faith. We are expending large sums of money to prepare for negotiation and, perhaps, litigation. With the exception of the Fort Peck Compact, little substantive progress has been achieved in other negotiations in the 6-year existence of the Compact Commission. This is due, in part, to the uncertainty of the life of the commission. We are prepared, or will be prepared in the near future, to litigate, if necessary, our reserved water claims in the Water Court. Consequently, because of the series of two year deadlines.

The Commission encourages the exchange of data by the negotiating parties, yet the Commission either has little or no data to exchange or has been unwilling to share it. Rather, the Commission seems content

with critiquing and rejecting Federal data. With respect to other Federal Agencies and to other Indian reservations, except Fort Peck, negotiations appear to be at a standstill. We recognize, however, that in some cases, the Commission is awaiting proposals from the tribes.

We urge the Legislature to enact Senate Bill No. 92 and extend the Commission. In addition, we urge the Legislature to encourage the Commission to begin making progress in the continued negotiations. Time is passing, and with each day, the Federal investment in litigation preparation grows. One of our motivating factors for negotiating has been to minimize our cost of quantifying reserved rights. As we continue to build our data base and knowledge, we will have developed such a strong litigation case that at some point, it may no longer be advantageous to negotiate.

In our view, negotiations are also frustrated by increasingly conservative legal and policy decisions by State officials, resulting in little real give or take in negotiations. We are told a reserved right either does not exist, in some circumstances, or the reserved rights is so narrowly construed as to be valueless. We believe that negotiation should begin without the constraints imposed by litigation.

To summarize, we support passage of Senate Bill No. 92, but for the purpose of initiating serious negotiations not as an extension of time to delay a difficult and complex task. Again, thank you for the opportunity to appear here today.

SENATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE January 28, 1987
BILL NO. SB 92

TESTIMONY OF THE FORT BELKNAP INDIAN COMMUNITY ON THE EXTENSION OF THE MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION -PRESENTED IN HELENA, MONTANA; JANUARY 28, 1987, BEFORE THE MONTANA SENATE NATURAL RESOURCES COMMITTEE

In 1981 the Fort Belknap Community Council authorized the Tribal Water Policy Committee to negotiate with the Montana Reserved Water Rights Compact Commission. Progress has been made in talks that have taken place between the Tribes and the State, but the issues being discussed are complex, and solutions are far-reaching. The consequences of failure will be severe for all those concerned. To say that the negotiation process has been a failure is easy. The Fort Belknap Tribes are being asked to quantify their rights to water for all time. That is a serious matter and is not taken lightly.

The tribes did not request the State or the federal government to quantify their Reserved Water Rights, and it is not in their best interest to have these rights quantified. The resources of the Fort Belknap Reservation remain undeveloped. When development does occur, water will be needed. The Tribes want to be assured that water will be available at that time, and the negotiation process should be geared toward that end. The most important thing is not to reach a compact as quickly as possible, but to reach a compact which will uphold the spirit of the Winters Doctrine.

It is true that the process is costly. But, the alternative will be even more costly. The Fort Belknap Tribes feel that the negotiation process allows more opportunity for their involvement. Whereas, litigation will lessen their ability to directly participate. Furthermore, based on previous experience, litigation will require years to complete, and the financial burden will be tremendous.

Colorado utilized a rather unique approach in reaching a solution to the Indian Reserved Water Rights claims in that State. It appears that through an attitude of cooperation rather than confrontation, solutions become more

SENATE NATURAL RESOURCES
EXHIBIT NO. 5 (page 2)
DATE January 28, 1987
BILL NO. SB 92

viable, and benefits are more equitable.

Fort Belknap supports this type of approach to the quantification process, and a six-year extension of the Compact Commission will give the Montana tribes, the federal government, and the State a reasonable time frame within which to work.

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

January 30, 1987

The meeting of the Senate Natural Resources Committee was called to order by Chairman Thomas Keating on January 30, 1987, at 1:00 p.m., in Room 405 of the State Capitol.

ROLL CALL: All members were present with the exception of Senator Severson who was absent.

CONSIDERATION OF SENATE BILL 208: Chair was taken by Sen. Cecil Weeding, Vice Chairman of Natural Resources, during the consideration and disposition of SB 208 that was introduced by Sen. Keating.

Sen. Keating said that SB 208 was introduced for the protection of royalty owners in the State from loss of royalties in the event an operator who handles funds from production falls into bankruptcy. Sen. Keating stated a case where the operator was also the purchaser of crude oil. The operator would buy the crude oil and move the money through his accounts to fund the royalty owners. However, when money flows into the operator's accounts at the time of of bankruptcy, there is no segregation between operator's own money and the money that belongs to the royalty owners. SB 208 would require those operators who commingle their royalty production with the royalty production that belongs to others to be held in a separate account and treated as trust proceeds rather than their own funds. In the event of bankruptcy, those proceeds would not be attached as assets of the operator who is filing Chapter 11 or Chapter 7.

PROPONENTS: Sen. Gage announced he was a "qualified" proponent; and if an amendment were attached to SB 208, he would be a proponent. The amendment that Sen. Gage suggested would be to strike that part of the bill that would require that separate accounts be set up for the funds; then the bill would simply state that particular funds are trust proceeds for the royalty owner and are not subject to bankruptcy or other proceedings from creditors. Sen. Gage said that he would prepare an amendment at a future time.

Sen. Larry Tveit stated that he would also be a proponent if the bill were to include the amendment that Sen. Gage suggested.

Sen. Gage indicated that he would talk to Mr. Shanahan and Montana Uniform Code Commissioners before committee meets for executive action on SB 86 and asked if there were any other items committee members would like brought to commissioners' attention.

Sen. Halligan stated his concern about the time limit that researcher mentioned. Also, Sen. Halligan said the definition of "minerals" was poor.

Sen. Keating said he would like "royalty" stricken from mineral interest definition.

Sen. Weeding asked Sen. Gage if Sen. Gage had any objection to striking "royalty interest" from SB 86. Sen. Gage replied that with so many deviations, SB 86 could hardly be called a "uniform act."

Sen. Keating said he knew of no cases where lost mineral owners had hindered marketability of property.

Sen. Gage reminded the committee that such a small amount of mineral interest is involved that it has no practical use to anyone or minerals would not have been allowed to become dormant nor mineral interest owners be unidentifiable.

Sens. Tveit and Lynch verbalized that they would like to discuss SB 86 after Sen. Gage had talked to those involved in writing SB 86 and after amendment had been written.

Sen. Gage stated that with the numerous objections that were cited, perhaps bill should be reported on an adverse committee report. However, Sen. Gage again said that he would first like to communicate with the uniform code commissioners.

DISPOSITION OF SB 208: Sen. Lynch said that since SB 208 seemed unworkable in any form that he would make a motion that SB 208 DO NOT PASS. Motion carried by majority vote.

DISPOSITION OF SB 92, EXTENSION OF RESERVED WATER RIGHTS COMPACT COMMISSION: Sen. Halligan said that the intent of Natural Resources Committee of the 50th Legislature should state intent that if progress is not made by compact commission by 1993, that reserved water rights agencies will go to court.

Sen. Yellowtail stated that negotiation of reserved water rights is a delicate matter and requested that committee reserve judgement on terminating the compact commission until 1993 and that no Statement of Intent be issued.

Sen. Stimatz explained that in the past, compact commission had authority to operate only in increments of two years; and SB 92 gives the commission a meaningful increment in which to work. Also, Sen. Stimatz reminded the committee that the compact commission only deals with reserved water rights of federal agencies and Indian tribes.

Sen. Walker made a motion that SB 92 DO PASS. Motion carried unanimously.

There being no further business to come before the committee, the hearing was adjourned at 2:30 P.M.

THOMAS F. KEATING, Chairman

nm

NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date January 3

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Keating, Chairman	X		
Sen. Cecil Weeding, Vice Chairman	X		
Sen. John Anderson	X		
Sen. Mike Halligan	X		
Sen. Delwyn Gage	X		
Sen. Lawrence Stimatz			
Sen. Larry Tveit	X		
Sen. "J.D." Lynch	X		
Sen. Sam Hofman	X		
Sen. William Yellowtail	X		
Sen. Elmer Severson		X	
Sen. Mike Walker	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

January 30 19 87

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration SENATE BILL No. 92

first reading copy (white color)

AUTHORIZES COMPACT COMMISSION TO CONTINUE NEGOTIATIONS WITH INDIAN TRIBES

Respectfully report as follows: That SENATE BILL No. 92

DO PASS

~~DO NOT PASS~~

SENATOR TOM KEATING Chairman.

m CS-32
• 1985

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY COMMITTEE

SENATE BILL UMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURREI IN AS AMENDED DATE
11		3/3/87	3/3/87					3/3/87			
20		3/12/87						3/13/87			
24		3/3/87							3/10/87		
25		3/3/87							3/10/87		
40		3/11/87						3/13/87			
48		3/15/87	tabled 3/27/87							reconsidered 4/8/87	
49		3/4/87								3/19/87	
51		3/10/87								3/20/87	
57		3/4/87	3/4/87					3/4/87			
58		3/10/87	3/11/87	tabled							
77		3/5/87	3/5/87					3/5/87			
88		3/5/87 3/11/87	3/5/87					3/5/87 3/19/87			
92		3/11/87						3/19/87			
94		3/11/87						3/13/87			
96		3/11/87						3/17/87			

e a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 19, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 19, 1987, at 8:00 a.m. in Room 312D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Addy who was excused.

EXECUTIVE SESSION:

ACTION OF SENATE BILL NO. 49:

Rep. Brown moved that SB #49 Be Concurred In. Rep. Cobb moved the subcommittee amendments. Rep. Rapp-Svrcek pointed out that the amendments were not unanimously passed by the subcommittee. Rep. Gould asked Rep. Cobb what can be done about people who are not 501 (c) tax status. Rep. Cobb stated that if those people are to be protected, amendment number 3 must be stricken, and they must file as a nonprofit organization with the state to be exempted. Rep. Gould acknowledged that he would like to segregate amendment number 3. Rep. Cobb pointed out that amendments number 1, 2, and 4 could be voted on and he moved those. Question was called and a voice vote was taken. The motion CARRIED 15-1 with Rep. Rapp-Svrcek dissenting. Rep. Brown moved that SB #49, Be Concurred In As Amended. Rep. Rapp-Svrcek moved amendment number 3, because he stated that it is an important amendment. (See Subcommittee Amendment No. 3 Attached-Exhibit A). Rep. Giacometto opposed the amendment because he pointed out that the people who fall under the Montana Corporation Act are the same people who fall under the 501 (c) and just have not filed. Rep. Miles explained that the filing of 501 (c) is not a problem to do and any nonprofit corporation should be doing this filing. She stated that those who do not file under the Montana NonProfit Corporation Act can cause a potential for abuse and this is in keeping with this act. We want to exempt officers and directors of nonprofit corporations. Rep. Giacometto stated that Montana does have a law and a standard, to clarify what a nonprofit corporation is and if it is regulated properly it will work. Question was called and a voice vote was taken. The motion FAILED 13-3. Amendment number 3 has been stricken. Rep. Mercer moved that §3 be stricken in its entirety. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Question was called on the bill to Be

Concurred In As Amended. A voice vote was taken and the motion CARRIED 15-1 with Rep. Rapp-Svrcek dissenting. SB #49 BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 189:

Rep. Bulger moved that SB #189, Be Concurred In. Rep. Bulger moved amendments (See Amendments - Exhibit A) and discussed them. Rep. Strizich stated that these amendments are essential in order for the schools to get the needed information on drug and alcohol abuse when it is in the best interest of the youth which is the spirit and content of the Youth Court Act. Question was called and a voice vote was taken. The motion CARRIED 9-5. (See Amendments Attached). Rep. Bulger moved that SB #189, Be Concurred In As Amended. Question was called and a voice vote was taken. The motion CARRIED 11-3 with Reps. Miles, Giacometto and Hannah dissenting. SB #189 BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 92:

Rep. Brown moved that SB #92, Be Concurred In. Question was called and a voice vote was taken. The motion CARRIED 15-1 with Rep. Cobb dissenting.

CHAIRMAN EARL LORY CLOSED THE EXECUTIVE SESSION

SENATE BILL NO. 92, Senator Stimatz, District No. 35, stated that this bill extends the authority of the reserved water rights compact commission to continue negotiations with the Indian Tribes until July 1, 1993. He pointed out that the Commission is composed of nine members, one is appointed by the Attorney General and the other eight are appointed by the Governor. SB #92, is an important bill that extends the life of the Commission for six years, he said. The importance of the Commission is that it can save millions of dollars if they are able to negotiate treaties and agreements with the Indian Tribes and the Federal Government for the reserved water rights.

PROPONENTS:

Senator Galt, Current Chairman of the Commission, stated that a six year compact date is very important. He strongly urged support for this legislation.

CHRIS TWEETEN, Assistant Attorney General for the State of Montana, who is currently the Vice-Chairman of the Reserved Water Right Compact Commission, explained that extension to six years will enable the Commission to finish work and target resources. Six years has been chosen because the most

immediate progress can be accomplished and the Water Policy Committee suggested that the Compact Commission existence be extended.

DANIEL F. DECKER, Confederated Salish and Kootenai Tribes Attorney, submitted written testimony from Michael T. Pablo, Tribal Chairman, (Exhibit A). Mr. Decker stated that the Tribes believe that SB #92 should be considered for passage and they firmly believe that negotiations should be considered as a viable alternative to litigation. Mr. Pablo stated in his written testimony that if SB #92 should not pass, negotiations would cease and we will follow the path of the state of Wyoming and the Windriver Reservation in litigation of water rights. The state of Wyoming has spent approximately eight million dollars in litigation costs and the issue is not yet settled. He strongly requested passage of this bill.

JO BRUNNER, Montana Water Development Association, stated that even this extension may not give the Commission enough time to work. She requested that all parties affected by these negotiations should be concluded in any meetings, hearings and agreements and she asked for a do pass on this bill.

LORENTS GROSFIELD, Montana Associated Conservation Districts, went on record in favor of this bill and they especially agree with Mr. Decker in regard to negotiations.

CLAUDIA MASSMAN, Montana Environmental Information Center, went on record in support of SB #92, and the work of the Compact Commission.

MARCIA RUNDLE, Attorney for the Compact Commission, stated that all of the entities that the Commission is negotiating with have been notified and three of the Tribes have indicated that they will not attend the hearing today because they were in attendance for the House hearing on this bill and testified in favor of it. The representatives of the Northern Cheyenne requested that she report today that they are in favor of the extension of the Commission.

See the Visitors' Register Attached for further proponents that did not testify.

There were no opponents.

QUESTIONS (or Discussion) ON SENATE BILL NO. 92:

Rep. Rapp-Svrcek asked Mr. Tweeten why this can't be extended

until the work is done. He answered that would be preferable as far as the Commission is concerned. The six year limitation is placed on the bill by the Water Policy Committee. Rep Rapp-Svrcek asked Senator Stimatz the same question. He stated that the sunset provision was put on the bill in the original bill and a deadline date puts the fire to the feet and they will move. The Commission feels they can accomplish their work within the six year period or they can never accomplish it. The filing of the water adjudication rights are in suspension until this Commission has a chance to do its' work, he said.

Rep. Eudaily asked Ms. Rundle where the money comes from under the state's special revenue fund and she stated that the Commission has been funded half by the general fund and half by the RIT and the Governor's office proposed that it will be continued with that proportion.

Rep. Meyers asked Mr. Tweeten how long the Compact Commission has been in existence. He stated that it has existed since 1979 or 1980.

Senator Stimatz closed the hearing on SB #92 by stating that negotiations are the way to go. The wrong way is through litigation.

SENATE BILL NO. 286, Senator Galt, District No. 16, stated that this act revises the stream access law to remove provisions declared unconstitutional. SB #286 also revises the provisions concerning portage routes. He pointed out that he is concerned with the stream beds and banks owned by private landowners and he is not talking about the large navigable streams where everyone recognizes that those beds and banks are owned by the state of Montana and are free and open to all of the public. SB #286 addresses the stream beds and banks of the private landowner. He submitted copies of the yellow bill that was submitted to the House Natural Resources Committee (Exhibit A) and a gray copy bill (Exhibit B) which is a compromise between the yellow copy and the blue copy bill. He stated that he personally likes the yellow copy bill and requested that the committee try and get the bill back into the yellow copy bill language. He would go along with the gray copy bill but he would rather the bill be killed than go along with the blue copy bill.

PROPONENTS AND OPPONENTS (Discussing Blue, Yellow and Gray Bills):

JIM BOTTOMLY, Rancher-Lawyer, Belgrade, stated that he is

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 19, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)		✓	✓
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

CS-30

STANDING COMMITTEE REPORT

MARCH 19, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 92

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

THIRD reading copy (BLUE color)

REP. IVERSON WILL CARRY THE BILL!

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION

Box 278
Pablo, Montana 59855
(406) 675-2700
FAX (406) 675-2806

A
3-19-87
SB#92

Joseph E. Dupuis - Executive Secretary
Vern L. Clairmont - Executive Treasurer
George Hewankorn -Sergeant-at-Arms

TRIBAL COUNCIL MEMBERS:
Michael Pablo - Chairman
Ron Therriault - Vice-Chairman
Laurence Kenmille
Louis W. Adams
Robert L. McCrea
Sonny Morigeau
Fred Matt
Victor L. Stinger
Pat Lefthand
James H. Steele

March 18, 1987

Honorable Earl Jory, Chairman
House Judiciary Committee
State Capitol
Helena, MT 59601

Dear Mr. Jory:

The Confederated Salish and Kootenai Tribes support S.B. 92 to extend the life of the Reserved Water Rights Compact Commission as written without any amendments. We are in negotiations with the Compact Commission but if amendments are attached the Tribal Council will have to reconsider our position.

Should S.B. 92 not pass negotiations would cease and we will follow the path of the state of Wyoming and the Windriver Reservation in litigation of water rights. The state of Wyoming has spent approximately 8 million dollars in litigation costs and the issue is not yet settled. Should the state of Montana have to litigate with all Tribes the cost would be staggering.

We have a difficult task ahead and we do not need any distractions which may effect the status of the Compact Commission with negotiations. I strongly request passage of S.B. 92 as written and let's get to the task ahead.

CONFEDERATED SALISH & KOOTENAI TRIBES

Sincerely,

Michael T. Pablo
Tribal Chairman

WITNESS STATEMENT

A
3-19-87
SB #92

NAME Daniel F Decker BILL NO. SB92

ADDRESS P.O Box 278, Pablo, Montana 59855 DATE 3/19/87

WHOM DO YOU REPRESENT? Confederated Salish and Kootenai Tribes

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:- See attached statement from the Confederated Salish and Kootenai Tribes; Tribal Council Chairman. Michael T. Pablo.

CS-34

VISITORS' REGISTER

JUDICIARY COMMITTEE

SENATE BILL NO. 93 DATE [illegible]

SPONSOR _____

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Jo Brunner	MEA-MFT	X	
Daniel Decker	[illegible]	X	
Marvin Dye	MACO	X	
Carolyn McClafferty	MACO	X	
Mark Simonich	Public	X	
Martin Hammon	METC	X	
Mary Dolan	[illegible]	X	
Loren B Gotchall	MT. Assoc. Counties	X	
Richard Langley			
Bob Brown	MT Assoc of Realtors	X	
James R Murgatroyd	Exec. Dir. Mont. Trial Lawyers	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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SENATE BILL NO. 92

INTRODUCED BY STIMATZ, ECK, ABRAMS, MARKS, BRADLEY, GALT, SPAETH, IVERSON, YELLOWTAIL, GAGE, HIRSCH, JERGESON, LYBECK, BENGTSON, REGAN, LYNCH, B. WILLIAMS, MANNING, WEEDING, JACOBSON, VAN VALKENBURG, HALLIGAN, VAUGHN, WALKER, MAZUREK, KOLSTAD, HARDING, HOFMAN, ANDERSON, THAYER, PHILLIPS, HANSON, NATHE, RUSSELL, KENNERLY, BACHINI, ASAY

BY REQUEST OF THE WATER POLICY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE AUTHORITY OF THE RESERVED WATER RIGHTS COMPACT COMMISSION TO CONTINUE NEGOTIATIONS WITH THE INDIAN TRIBES UNTIL JULY 1, 1993; AMENDING SECTIONS 85-2-217 AND 85-2-702, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-217, MCA, is amended to read:

"85-2-217. Suspension of adjudication. While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies which are negotiating are suspended. The obligation to file water rights claims for those reserved rights is also suspended. This suspension shall be effective until July 1, ~~1987~~ 1993, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, ~~1987~~ 1993, the suspension shall terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies shall be subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their reserved water rights shall be subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section."

Section 2. Section 85-2-702, MCA, is amended to read:

"85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings shall be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Upon receipt of such written

designation from the governing body of a tribe, compact negotiations shall be considered to have commenced.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana and any affected tribal governing body, and approval by the appropriate federal authority.

(3) Upon its ratification by the Montana legislature and the tribe, the terms of a compact must be included in the preliminary decree as provided by 85-2-231, and unless an objection to the compact is sustained under 85-2-233, the terms of the compact must be included in the final decree without alteration. However, if approval of the state legislature and tribe has not been accomplished by July 1, ~~1987~~ 1993, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 6 months. These new filings shall be used in the formulation of the preliminary decree and shall be given treatment similar to that given to all other filings."

NEW SECTION. Section 3. Effective date. This act is effective July 1, 1987.

-End-